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THE ATTORNEY GENERAL'S GUIDE FOR MANDATED REPORTERS

**Your Responsibilities for the Reporting of Abuse, Neglect, and
Financial Exploitation of Children, Elders and the Disabled**

SCOTT HARSHBARGER

**ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS**

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BY
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THE ATTORNEY GENERAL'S GUIDE FOR MANDATED REPORTERS IN MASSACHUSETTS

TABLE OF CONTENTS

MESSAGE FROM THE ATTORNEY GENERAL

SCOTT HARSHBARGER	
ATTORNEY GENERAL	i

INTRODUCTION

GERALD WHITBURN, SECRETARY	
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES	ii

SCOPE OF THE GUIDE 1

WHO IS PROTECTED?	1
WHAT STATE AGENCIES ARE INVOLVED?	1

ABUSE AND NEGLECT 3

THE LAW	3
DEFINITIONS	4

MANDATED REPORTING 5

WHAT IS A MANDATED REPORTER?	5
WHO IS A MANDATED REPORTER?	5
IF I AM A MANDATED REPORTER, WHAT AM I REQUIRED TO DO?	7
WHO ELSE MAY REPORT ABUSE?	7
ARE THERE PENALTIES FOR FAILING TO REPORT?	7
ARE THERE PROTECTIONS FOR REPORTERS?	7

WHAT HAPPENS AFTER A REPORT IS MADE? 9

WHAT ARE THE RESULTS OF REPORTING?	10
OTHER REMEDIES	11
REGISTRATION OF OFFENDERS	11

CONCLUSION 11

IMPORTANT ADDRESSES AND PHONE NUMBERS 12



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MESSAGE FROM THE ATTORNEY GENERAL

The Massachusetts Office of the Attorney General has a continuing commitment to prosecuting and preventing incidents of abuse, neglect and mistreatment of our vulnerable citizens, including children, older persons and the disabled. In order to be as effective as possible in our pursuit of those goals, we need the assistance of an informed and knowledgeable community. Only through accurate identification and reporting of these incidents are we able to take appropriate action.

Over the years, different systems for identifying, reporting and investigating incidents of abuse, neglect and mistreatment have evolved in Massachusetts. Because these systems are somewhat complex and because the Office of the Attorney General has certain duties and responsibilities regarding all incidents, no matter which agency's clients may be involved, we decided to publish this Guide to be used as a resource by all persons concerned with these issues.

We urge you to read it and become familiar with its contents. By doing so and by taking the action it describes, you will become a real resource in what should be everyone's fight against abuse and neglect.

*Scott Harshbarger
Attorney General of Massachusetts*



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INTRODUCTION

The Executive Office of Health and Human Services is pleased to be a sponsor of this Guide to better inform the public about the important role each of us has in protecting the most vulnerable members of our society. The Attorney General and I share a commitment to place the protection of children, the disabled and the elderly as one of the highest priorities of our service to the citizens of Massachusetts.

The Executive Office of Health and Human Services provides a dual responsibility in the protection of the people covered in this Guide. First, we are responsible for investigating instances of abuse or mistreatment with an eye towards providing services to prevent further abuse. Second, as a regulator of the health and human services industry, we are responsible for the quality of care provided in this field. This Guide therefore will help the many thousands of professionals and concerned citizens find how to get state government to respond quickly and effectively to the issues of abuse and mistreatment.

The first step in ending abuse is to report it when you suspect it. Early detection and reporting are extremely important. It is with this first step that we can be in a position to help. I welcome all the Attorney General's efforts to hold people who abuse children, disabled persons and the elderly responsible for their action.

*Gerald Whitburn, Secretary
Health and Human Services*

SCOPE OF THE GUIDE

WHO IS PROTECTED?

Disabled persons - people between the ages of 18 and 59 who are mentally retarded, or who are otherwise physically or mentally disabled and as a result are wholly or partially dependent on others to meet their daily living needs.

Patients or residents of long-term care facilities. These facilities include nursing homes, rest homes and others.

Elderly people - people who are 60 years of age or older.

Children - all persons under the age of 18.

Note: These definitions are for the purposes of this Guide and are tied to Massachusetts law governing mandated reporting of abuse and neglect. In other areas of the law, these words and phrases may have different definitions.

WHAT STATE AGENCIES ARE INVOLVED?

Executive Office of Elder Affairs

This agency is responsible for mobilizing the resources to plan, develop, and implement programs to insure the dignity and independence of elderly persons.

Executive Office of Health and Human Services - includes:

Department of Mental Health - this agency is charged with providing services to citizens with long-term or serious mental illness and early and ongoing treatment for mental illness. DMH has general supervision and control of all public facilities for mentally ill persons and has general supervision of all private facilities for such persons.

Department of Mental Retardation - this agency is charged with the responsibility to provide services to citizens with mental retardation. DMR has general supervision and control of all public facilities for mentally retarded persons and has general supervision of all private facilities for such persons.

Department of Social Services - this agency is charged with providing protective services to and preventing abuse and neglect of children in the Commonwealth.

Department of Public Health - this agency is responsible for the overall health of all citizens and also regulates nursing homes, rest homes, charitable homes for the aged, and intermediate care facilities for the mentally retarded.

Independent Agency :

Disabled Persons Protection Commission - this agency was established in 1987 to provide for the investigation and remediation of instances of abuse of disabled persons in the Commonwealth.

Note: The above agencies sometimes have overlapping responsibilities. In addition, local and state police often act in concert with the agencies and each other in cases of abuse and neglect.

ABUSE AND NEGLECT

Instances of physical and emotional abuse and neglect of vulnerable members of our society are tragic, and continue to occur despite the efforts of many dedicated people. We must face the existence of abuse and neglect, and develop ways to handle the incidents that take place. We must start by understanding what abuse, neglect, and mistreatment are, and by knowing what laws apply to the reporting, investigation, and prevention of abuse.

Although not physical in nature, financial exploitation also can be extremely harmful to those who are its victims. Unfortunately, financial exploitation occurs too often, with the elderly and the disabled suffering the consequences. Often, such activity will be carried out by persons in positions of trust and by caretakers. Financial exploitation is reprehensible and should not be tolerated. Do not assume that financial exploitation victims will report their losses -- they may be reluctant to do so or may not understand the true nature of the exploitation.

THE LAW

The following chapters of the Massachusetts General Laws concern the abuse of the disabled, children and the elderly:

Chapter 19A

- This law created the Executive Office of Elder Affairs. Sections 14 through 26 of Chapter 19A apply to the abuse of elders.

Chapter 19C

- This law covers the reporting and investigation of abuse of disabled persons. Chapter 19C established the Disabled Persons Protection Commission (DPPC) and gave it the power to investigate instances of abuse of disabled persons.

Chapter 111

- This law covers the Department of Public Health. The Patient Abuse Statute, which is covered in Sections 72F-L concerns the reporting and investigation of incidents of abuse, neglect, or mistreatment of patients or residents in long-term care facilities, such as nursing homes, rest homes, convalescent homes, charitable homes for the aged, and community-based intermediate care facilities for the mentally retarded.

Chapter 119

- This law, specifically Section 51A, concerns the reporting and investigation of incidents of abuse, neglect or mistreatment of children and the role of the Department of Social Services.

DEFINITIONS

ABUSE OF DISABLED PERSONS is defined by Chapter 19C as:

ABUSE - "an act or omission which results in serious physical or emotional injury to a disabled person."

ABUSE OF ELDERLY PERSONS is defined by Chapter 19A as:

ABUSE - "an act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person."

ABUSE, MISTREATMENT, AND NEGLECT OF PATIENTS OR RESIDENTS IN LONG-TERM CARE FACILITIES are defined by Chapter 111 as:

ABUSE - "physical contact which harms or is likely to harm the patient or resident."

MISTREATMENT - "use of medications, isolation, or use of physical or chemical restraints which harms or is likely to harm the patient or resident."

NEGLECT - "the failure to provide treatment and services necessary to maintain the health and safety of the patient or resident."

ABUSED CHILD is defined by Chapter 119 as:

ABUSED - a child "suffering physical or emotional injury...which causes harm or substantial risk of harm to the child's health or welfare including sexual abuse, or from neglect, or who is determined to be physically dependent upon an addictive drug at birth."

MANDATED REPORTING

Vulnerable members of our society who suffer from abuse are not always able to report the abuse inflicted on them. So, it is important for people who interact with children, disabled persons and the elderly to know how, when, and where to report incidents of abuse. Reporting abuse to the proper agency will not only help the person who has suffered the abuse in that particular situation, but will also send out a broader message to everyone that mistreatment will not be tolerated or ignored.

Human service and law enforcement agencies not only encourage care-givers and others who come in contact with more vulnerable citizens to report incidents of abuse and neglect, but Massachusetts laws also require certain people to report incidents they observe.

WHAT IS A MANDATED REPORTER?

A mandated reporter is someone who is required by Massachusetts law to notify a particular state agency when there is reason to believe that a disabled person, an elderly person or a child has been abused, neglected, or mistreated. Mandated reporter laws are designed in part to encourage the earliest possible detection and reporting of abuse.

WHO IS A MANDATED REPORTER?

All of the statutes (Chapters 19A, 19C, 111, and 119) designate the following people as mandated reporters:

dentists, medical examiners (coroner), medical interns, nurses, physicians, police officers, and social workers

For Children (Chapter 119)

chiropractor
clerk/magistrate of
district court
clinical social worker
day care worker
drug and alcoholism
counselor

educational administrator
EMT (emergency medical
technician)
family counselor
firefighter
foster parent
guidance counselor

hospital personnel (M.G.L.
c. 112 Section 165 -
licensed mental health and
human services
professionals)

(Children cont)

office for children licensor
osteopath
paid child care facility worker
parole officer
podiatrist
probation officer
psychiatrist
psychologist
school attendance officer
school teacher

For Residents of Nursing Homes and Long-Term Care Facilities

(Chapter 111)¹

audiologist
chiropractor
health officer
nurse's aide
family counselor
occupational therapist
optician
optometrist
orderly
pharmacist
physical therapist
podiatrist
speech pathologist
psychologist

¹CHAPTER 111, SECTION 72G ALSO INCLUDES ANY PERSON PAID FOR CARING FOR A PATIENT OR RESIDENT IN A LONG-TERM CARE FACILITY.

For Disabled Persons

(chapter 19C)²

chiropractor
day care worker
educational administer
family counsellor
foster parent
guidance counsellor
osteopath
probation officer
psychologist
school teacher

For Elderly Persons

(chapter 19A)

EMT (emergency medical technician)
family counsellor
firefighter
occupational therapist
osteopath
physical therapist
physician assistant
probation officer
podiatrist

²CHAPTER 19C ALSO INCLUDES ANY OTHER HOSPITAL PERSONNEL ENGAGED IN THE EXAMINATION, CARE OR TREATMENT OF PATIENTS, PEOPLE EMPLOYED BY A STATE AGENCY WITHIN THE EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES, AND PEOPLE EMPLOYED BY A PRIVATE AGENCY PROVIDING SERVICES TO DISABLED PERSONS.

IF I AM A MANDATED REPORTER, WHAT AM I REQUIRED TO DO?

If you suspect abuse, first you must immediately telephone the appropriate agency.

- * Abuse of the elderly must be reported to the Department of Elder Affairs, as required by Chapter 19A, Section 15.
- * Abuse of adults with disabilities must be reported to the Disabled Persons Protection Commission (DPPC), as required by Chapter 19C, Section 10.
- * Abuse occurring in nursing homes or other long-term care facilities must be reported to the Department of Public Health's Division of Health Care Quality, as required by Chapter 111, Section 72G.
- * Abuse of children must be reported to the Department of Social Services as required by Chapter 119, Section 51A.

NEXT, within 48 hours of your oral report to the agency, you must provide the agency with a written report, which should include at a minimum the following: name and address of the person abused; if a child, names and addresses of parents and child; age, if known; victim's sex; description of injuries and history of other abuse/injuries, if known; circumstances of reporter's learning of abuse; any protective action taken; name and address of reporter; identity of person(s) responsible for abuse, if known; any other helpful information.

WHO ELSE MAY REPORT ABUSE?

Any other person may report incidents of abuse if they have reasonable cause to believe that a child, a long-term care patient, a disabled person or an elderly person has been abused.

ARE THERE PENALTIES FOR FAILING TO REPORT?

Yes. If you are a mandated reporter and you fail to report an incident of abuse, you can be fined up to \$1,000.

ARE THERE PROTECTIONS FOR REPORTERS?

Yes. If you are a mandated reporter and you report an incident of

abuse, you cannot be held liable in any civil or criminal action as a result of submitting the report. Any non-mandated reporter who reports abuse is also protected as long as the report is given in good faith. These statutory provisions give no protection to reporters for whatever liability they may have for causing the underlying abuse or neglect.

In addition, the statutes protect reporters against retaliation, discharge, or other forms of discipline and discrimination for reporting abuse:

- * Chapter 19A, Section 15 prohibits supervisors or employers from taking any action detrimental to an employee who files a report of abuse of an elderly person.
- * Chapter 19C, Section 11 provides for a fine of up to \$1,000 and/or imprisonment of up to one year for acts of retaliation against reporters of abuse of disabled persons.
- * Chapter 111, Section 72G provides that a nursing home or other facility which retaliates against a reporter of abuse is liable for triple damages, costs, and attorneys' fees.
- * Chapter 119, Section 51A provides that any employer retaliating against an employee-reporter who reports abuse of a child is liable for triple damages, costs and attorney's fees.

In addition, in 1994 the Legislature passed and the Governor signed a law giving all public employees rights to reinstatement, triple lost wages, costs and attorney's fees for a public employer's retaliation against an employee who reports the employer's violation of the law.

The above are so-called "whistle blower" statutes, insuring protection for those who are mandated and who volunteer in good faith to report and expose abuse. They are designed to encourage reporting and should provide a level of comfort and security for persons who help in the fight against abuse.

WHAT HAPPENS AFTER A REPORT IS MADE?

The procedures followed after an agency receives a report are generally alike.

First, based on the information contained in the report and any appropriate follow-up, the agency determines if an investigation is warranted. If that determination is made, an investigator is assigned and the investigation proceeds.

Next, based upon a further written report, the agency makes an assessment of the need for protective services for the abused person and provides those services when indicated even where criminal proceedings are begun.

In certain cases, depending upon the circumstances, the agency may also refer the matter to the appropriate law enforcement agency for possible criminal investigation and prosecution. Some examples of the kinds of criminal prosecutions that might be brought are:

- * Assault and battery. Chapter 265, Section 13A.
- * Assault and battery by means of a dangerous weapon on a person over 65 years old. Chapter 265, Section 15(A).
- * Indecent assault and battery on a person over 14 years of age. Chapter 265, Section 13H.
- * Indecent assault and battery on a mentally retarded person. Chapter 265, Section 13F.
- * Intimidation of a witness. Chapter 268, Section 13B.
- * Abuse of patients in long-term care facilities. Chapter 265, Section 38.
- * Larceny by stealing. Chapter 266, Section 30.
- * Receiving stolen property. Chapter 266, Section 30.
- * Assault and battery upon a child. Chapter 265, Section 13J.
- * Indecent assault and battery on child under 14 years of age. Chapter 265, Section 13B.
- * Rape and abuse of child. Chapter 265, Section 23.

The agency would also take steps in all cases to insure that abusers are held responsible for their actions and that such abuse does not occur again.

WHAT ARE THE RESULTS OF REPORTING?

Reporting abuse can lead to a variety of actions: personnel actions, civil lawsuits and criminal prosecution are among them. Mandated reporters are required to report instances of physical, emotional or financial exploitation even if they do not believe that such conduct constitutes a crime. Nonetheless, criminal prosecutions in egregious circumstances emphasize the seriousness of the fight against abuse, deter future abuse and punish persons responsible for past abuse.

Examples of the types of cases which could lead to criminal prosecutions include:

1. A foster parent disciplines a child by shaking it excessively, causing death of the child. The foster parent could be prosecuted for manslaughter.
2. A direct care worker in a community residence is observed to push a small 62-year-old mentally retarded resident. As a result of being pushed, the victim falls, slides across the floor and strikes his head on a closet door. The worker could be prosecuted for crimes including assault and battery.
3. Nurses or other direct care workers, knowing of a mentally retarded woman's history of ingesting foreign objects and fluids, fail to properly monitor her and later fail to provide proper medical care in spite of clear signs of her distress. The nurses could be prosecuted for patient abuse.
4. Two nurses aides at a nursing home, together or individually abuse six residents. The abuse includes slapping, pinching, pulling of hair and "flipping" noses with a finger. The aides refer to their actions as "afternoon delight". The abuse takes place over a period of two months until the behavior becomes so outrageous that co-workers report the aides. Both could be prosecuted for patient abuse.
5. Direct care workers take patients' or clients' valuables without consent. They could be prosecuted for theft.

IMPORTANT

The above examples could result in criminal prosecution. Mandated reporters, however, must report all abuse, neglect and financial exploitation, even when the conduct involved may not be criminal. The mandated reporter's duty is to report -- others will then determine what action is appropriate to take against the alleged abuser.

OTHER REMEDIES

The Office of the Attorney General, in cases involving financial instability or insolvency, may seek court-ordered receiverships over nursing homes. This form of court relief allows residents to be protected from nursing home operators who do not fulfill their responsibilities to their residents.

REGISTRATION OF OFFENDERS

At this time, the Department of Social Services and Department of Public Health have "central registries" containing the identities of persons involved as abusers of children and nursing home residents, respectively. The registries help keep persons identified as abusers from further violating vulnerable persons' rights. Early reporting of abuse will contribute to better identification of abusers and to more accurate registries.

CONCLUSION

It is a tragic reality that abuse and neglect of our elders, children, and disabled persons occur. The best way to prevent these problems is to admit they exist and then take all possible action--including vigorous prosecution, education, and training--to prevent them in the future.

Early reporting of abuse is the most important first step in the process.
Everyone--not just mandated reporters--can be a potential reporter of abuse and neglect.

Whether or not you are a mandated reporter, you can help spread the word. You can help look out for our fellow citizens--elders, the disabled, children--who from time to time find themselves in vulnerable circumstances. You can do this by keeping an eye out for abuse, reporting it and educating others to the problem.

Remember, if you have doubts about a particular instance of abuse, but you have a good faith basis for your report, err on the side of reporting the abuse. Once you do, others will be able to follow up and take action. If you fail to report, that abuse may remain hidden, never come to light--and worst of all--continue, often with tragic results.

IMPORTANT ADDRESSES AND PHONE NUMBERS

Disabled Persons Protection Commission

(When disabled persons between the ages of 18 and 59 are involved)

Disabled Persons Protection Commission
99 Bedford Street - Room 200
Boston, MA 02111-2217

During business hours: (617) 727-6465
(800)245-0062

24-HOUR HOTLINE: (800) 426-9009

* * *

Department of Public Health - Division of Health Care Quality

(When residents of nursing homes or other long-term care facilities are involved)

Patient Complaint Unit
Department of Public Health
Division of Health Care Quality
10 West Street
Boston, MA 02111

During business hours: (617) 727-5860

24-HOUR HOTLINE: (800) 462-5540

* * *

Department of Elder Affairs

(When persons 60 years of age or older are involved)

Executive Office of Elder Affairs
One Ashburton Place
Boston, MA 02108

During business hours: (617) 727-7750

ELDER ABUSE HOTLINE: (800) 922-2275

* * *

Department of Social Services

(When persons under age 18 are involved)

Department of Social Services
24 Farnsworth Street
Boston, MA 02110-1247

During business hours: (617) 727-0900

CHILD -AT -RISK HOTLINE: (800) 792 -5200

If you are uncertain which agency to notify, please call:

EOHHS Office of Investigation
One Ashburton Place
Boston, MA 02108

During business hours: (617) 727 -7600

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